

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION – FELONY BRANCH**

UNITED STATES OF AMERICA

v.

KEYON CALDWELL

Criminal No.: 2012 CF1 006370

Judge: The Honorable Thomas J. Motley

Sentencing Date: September 21, 2012

GOVERNMENT'S MEMORANDUM IN AID OF SENTENCING

The United States, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits this memorandum in aid of sentencing. For the reasons set forth herein, the government respectfully recommends that the Court impose a sentence totaling 204 months of incarceration. In support of this recommendation, the government submits the following points and authorities, and any others which may be cited at a hearing on this matter.

I. Background

The evidence that the defendant acknowledged at the Rule 11 hearing established that at approximately 8:02 p.m. on Wednesday, April 11, 2012, units from the Fifth District of the Washington, DC Metropolitan Police Department were dispatched to 662 24th Street NE, Washington, DC, to investigate the sounds of gunshots. Officers arrived on the scene and located the decedent, Draynell Henderson, laying in the hallway of 662 24th Street NE, directly outside of Apartment #32. The decedent was unconscious, unresponsive and suffering from multiple gunshot wounds to the body. DCFEMS transported the Mr. Henderson to Washington Hospital Center where he was pronounced dead.

Later that same evening, an eye witness was interviewed by MPD detectives and it was learned that the witness was inside of Apartment #32 with the defendant, Keyon Caldwell. The witness lived at that apartment with the defendant, and has known the defendant for many years. The witness saw the Draynell Henderson, also known to the witness, come into the apartment and say to the defendant "I got something

ORIGINAL

FILED

SEP 19 P 3:12
CRIMINAL DIVISION
DISTRICT OF COLUMBIA

good for us." Mr. Henderson and the defendant then left the apartment. When the witness observed this interaction between the defendant and Mr. Henderson, the witness understood that the two were intending to leave to smoke PCP together.

Approximately 15 minutes later, while inside of a bedroom in the apartment, the witness heard several gunshots that sounded like they were coming from inside of the apartment. The witness locked the bedroom door and began yelling for help. After about a minute, the witness came into the living room and saw the defendant laying on the floor in the doorway of the apartment, holding a pistol in his right hand. The defendant was pointing the gun at Mr. Henderson. The front door of the apartment was open and Mr. Henderson was laying in the hallway of the building, bleeding and gasping for air. Mr. Henderson was approximately 5 feet from where the defendant was laying on the floor holding the gun. The witness observed that the defendant appeared to be under the influence of PCP.

The witness attempted to pry the gun from the defendant's hand, while saying to the defendant "give me the gun." While attempting to pry the gun from the defendant's hand, the witness also called 911. The witness was able to pry the gun from the defendant's hand, took the gun and placed it in the drawer of a chest of drawers in the bedroom. The witness quickly returned to the living room to find the door to the apartment closed, and the defendant inside of the apartment. The witness remained on the 911 call until the witness heard MPD officers in the hallway of the building. The witness then screamed for help.

The witness recognized the handgun that the defendant was holding, and had seen the same gun on the defendant's person 2 days prior to the shooting. The witness also knew the defendant to carry that handgun regularly.

Officer Jeffery Scharf and his partner, Officer Alexis Salulich, arrived on the scene at 662 24th Street NE, and found the decedent laying in the hallway face down in a puddle of blood. Officer Scharf heard a witness screaming inside of Apartment #32 that the witness had the shooter and weapon inside. The officers entered the apartment and found the defendant on the floor motionless. The defendant also appeared to the

officers to be under the influence of PCP. A search warrant was obtained for 662 24th Street, NE, Apartment #32. The handgun and other items of evidence were recovered. The handgun, a Ruger 9 mm semi-automatic pistol, had a fifteen round magazine in it. The magazine contained 9 rounds and one round was in the chamber of the handgun. The handgun had the hammer cocked to the rear. During the course of the investigation, five spent casings were found in the apartment around the door, and in the hallway near the door to the apartment. The spent casings were of the same caliber and brand found in the recovered handgun.

On April 30, 2012, the defendant entered a plea, pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), to one count of Voluntary Manslaughter While Armed with an operable pistol, based upon the foregoing facts. The plea was also entered pursuant to Rule 11(e)(1)(C) of the Superior Court Rules of Criminal Procedure, whereby the government agreed to advocate for a guideline compliant sentence.

II. Sentencing Factors

It is well-established that in determining the appropriate sentence for the defendant, the Court may take into consideration any factor other than race, gender, marital status, ethnic origin, religious affiliation, or sexual orientation. See, D.C. Sentencing Guidelines Practice Manual at § 3.2. It is appropriate for the Court to take into consideration the nature and circumstances of the defendant's offense, his criminal history and background, and the public's interest in punishment, deterrence and rehabilitation. As discussed, each of the factors below support the government's recommendation that the defendant should be sentenced to an appropriate period of incarceration for his offense, in this case, to 204 months' imprisonment.

A. Nature and Circumstances of the Instant Offense

The nature and circumstances of the defendant's offense is horrifically violent. The defendant shot his friend, Mr. Henderson, a number of times, killing him, while in a PCP induced stupor. The defendant voluntarily ingested that horrible drug, causing him to loose touch with reality, while armed with a pistol.

The defendant committed this grievous crime in the hallway immediately outside of his own home. In doing so, the defendant not only gunned down Mr. Henderson, but also endangered others, including his own young children, who were in the apartment. The defendant's conduct was utterly outrageous and senseless. The Court would be hard pressed to imagine a more senseless taking of life, or a more horrific endangerment of others. By ingesting PCP, the defendant voluntarily became a crazed and extraordinarily dangerous armed villain. Not only was the defendant's conduct on April 11, 2012 utterly outrageous, horribly violent and extraordinarily dangerous, but it was also wholly foreseeable that the life of another would be taken.

B. The Defendant's Criminality and Background

As an initial matter, the government takes issue with the calculation made by the Presentence Report writer regarding the defendant's criminal history score. Specifically, in the "Prior Criminal Record" section of the PSR, the writer mistakenly characterizes the defendant's conviction in case number 1996-FEL-003557 as "Attempt to Commit Sex Offense/Gun Count 6," designates the disposition date as "7/27/97" and scores the offense as an "M5" offense, adding 3 points to the defendant's criminal history score. See Presentence Report, p. 8. This mistake causes the PSR writer to incorrectly inflate the defendant's overall criminal history score to 6.00, placing the defendant in "Column E" on the Master Grid of the Sentencing Guidelines. This miscalculation places the defendant's guideline range as 138 months to life in prison. See id., p. 25.

With regard to case number 1996-FEL-003557, the government has reviewed the government's case file, and proffers to the Court that, based on the information in the government's case file, on October 12, 1996, the defendant entered a guilty plea to one count of Attempted Fourth Degree Sexual Abuse, a lesser included offense of Count One of the indictment in that case, which was First Degree Sexual Abuse While Armed. On December 6, 1996, the defendant was sentenced to 2 years under the Youth Act, the entirety of the sentence was suspended as to all but 7 months, which had been served, and 6 months probation. The government calculates the offense of conviction in that case, Attempted Fourth Degree Sexual Abuse, as a

"Master 9" offense, adding 1 point to the defendant's Criminal History Score. Accordingly, the government calculates the defendant as having a criminal history score of 4.5, placing him in "Column D" of the Master Grid, which renders the defendant's guideline range as 126 to 216 months' imprisonment.

The defendant's specific background reinforces the conclusion that an appropriately lengthy period of incarceration is warranted. The defendant's conduct in this case is of a piece with his broader, consistent criminal behavior going back to his youth in the early 1990's. That criminal background is extensive, continuous and dangerous. The defendant's criminal history consists of narcotics offenses, weapons offenses, and a sex offense, all leading up to and culminating in the instant offense.

This case represents the defendant's thirty-first arrest and his eleventh conviction. This extensive history demonstrates that the defendant remains a significant danger to the community if not adequately punished and rehabilitated.

Of course, the defendant's dangerous drug use has contributed to his criminal history and goes far in explaining the causes of his criminality. The defendant's longstanding drug abuse, particularly his abuse of PCP, which is so destructive, has certainly given rise to, and exacerbated, mental health problems that the defendant has failed to address in his life. Indeed, the defendant committed the instant offense while in a PCP induced rage, unexplainable to the rational mind.

The government is not unmindful of the circumstances in which the defendant was raised, and the nexus between those circumstances and the defendant's criminal behavior. Nevertheless, the defendant must be made to account for his behavior of April 11, 2012, which caused the death of Mr. Henderson, and inflicted so much damage to the victim's family as well as to the broader community.

C. The Public's Interests in Punishment, Deterrence, and Rehabilitation

In this matter, the offense committed by the defendant was of the utmost seriousness and the public's interest is correspondingly strongly in favor of an appropriately lengthy period of incarceration. The

defendant must be appropriately punished for so horribly and senselessly taking the life of Draynell Henderson. In addition, as is noted by the Presentence Report writer, the defendant poses a high risk to public safety, see Presentence Report, p. 23. Moreover, the defendant's criminality and background raise concerns that he may commit additional offenses, including violent offenses, if he is released prematurely. Accordingly, the public's interest in deterring the defendant from committing further offenses, including acts of violence, likewise strongly favors a lengthy period of incarceration. While the defendant's rehabilitation is always a consideration at sentencing, against this back drop, a lengthy period of incarceration is appropriate in this case.

III. Government's Recommendation

The defendant should receive the benefit of the plea bargain in this case and he should be credited for accepting responsibility for his offense. Additionally, the defendant should be credited for sparing the government and the Court the resources required to bring the case to trial, as well as for sparing the family of Draynell Henderson the trauma of reliving the events of April 11, 2012. The defendant has already received much of that benefit. By entering a guilty plea in this case, the defendant limited his potential criminal exposure. That is, in exchange for the defendant's guilty plea in this case, the government agreed to abandon its pursuit of greater charges and sentencing enhancements to which the defendant was exposed.

Moreover, by acknowledging his criminal conduct, and by acknowledging the harm that he has done to so many in taking the life of Draynell Henderson, as well as to the community as a whole, the defendant has shown his willingness to undertake the hard work of amending his life. See, Blackledge v. Allison, 431 U.S. 63, 71 (1977) (By entering guilty plea, "the defendant avoids . . . the anxieties and uncertainties of a trial; he gains a speedy disposition of his case, the chance to acknowledge his guilt, and a prompt start in realizing whatever potential there may be for rehabilitation. Judges and prosecutors conserve vital and scarce resources. The public is protected from the risks posed by those charged with criminal offenses who are at

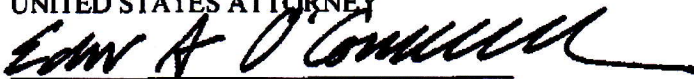
large on bail while awaiting completion of criminal proceedings.”).

The government recommends that the defendant's criminal conduct in this case warrants a sentence that accurately reflect his culpability. Accordingly, the government respectfully recommends that the Court honor the terms of the plea agreement in this case, made pursuant to Superior Court Rule 11(e)(1)(C). The government respectfully recommends that the Court impose a sentence of 204 months' incarceration, followed by a period of Supervised Release of 5 years.

Respectfully submitted,

RONALD C. MACHEN JR.
UNITED STATES ATTORNEY

By:



EDWARD A. O'CONNELL
Assistant United States Attorney
555 Fourth Street NW
Homicide Section – Room 9417
Washington, DC 20530
(202) 252-7420
Edward.O'Connell@usdoj.gov

Filed September 19, 2012